

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MISTY L. QUAALE,

Plaintiff,

v.

CAROLYN W. COLVIN,

Defendant.

NO: 14-CV-0392-FVS

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT AND DENYING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

BEFORE THE COURT are the parties' cross motions for summary judgment. ECF Nos. 12 and 15. This matter was submitted for consideration without oral argument. Plaintiff was represented by Joseph M. Linehan. Defendant was represented by Nicole A. Jabaily. The Court has reviewed the administrative record and the parties' completed briefing and is fully informed. For the reasons discussed below, the court grants Defendant's Motion for Summary Judgment and denies Plaintiff's Motion for Summary Judgment.

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JURISDICTION

Plaintiff Misty L. Quaale protectively filed for supplemental security income (“SSI”) and disability insurance benefits on December 12, 2011. Tr. 197-206. Plaintiff alleged an onset date of March 12, 2008 (Tr. 197, 199); which was later amended to December 12, 2011 (Tr. 220). Benefits were denied initially and upon reconsideration. Tr. 130-136, 140-143. Plaintiff requested a hearing before an administrative law judge (“ALJ”), which was held before ALJ Moira Ausems on October 2, 2013. Tr. 41-78. Plaintiff was represented by counsel and testified at the hearing. Tr. 50-71. Vocational expert Sharon Welter also testified. Tr. 71-77. A supplemental hearing was held before ALJ Lori Freund on May 15, 2014. Tr. 79-93. Plaintiff was represented by counsel and testified at the hearing. Tr. 88-93. ALJ Freund denied benefits (Tr. 17-40) and the Appeals Council denied review (Tr. 1). The matter is now before this court pursuant to 42 U.S.C. § 405(g).

STATEMENT OF FACTS

The facts of the case are set forth in the administrative hearing and transcripts, the ALJ’s decision, and the briefs of Plaintiff and the Commissioner, and will therefore only be summarized here.

Plaintiff was 33 years old at the time of the hearing. *See* Tr. 221. She completed high school, where she attended special education classes. Tr. 226. Plaintiff’s previous employment included sales attendant, working at a call center,

1 running a gondola, and housecleaning. Tr. 50-55. Plaintiff claims she is disabled
2 due to bipolar, anxiety, depression, anger and acid reflux. *See* Tr. 142. She testified
3 that she is really sad most of the time and doesn't like to talk to people in person,
4 has anxiety attacks around strangers, and sees flashes of shadows out of the corner
5 of her eye. Tr. 55, 61-62, 65-68. She takes medication for these ailments, and
6 Plaintiff testified that it helps with her symptoms. Tr. 62, 65-66. Plaintiff lives with
7 her mother and her three children. Tr. 56. She testified that she cooks a couple of
8 times a week and mows the lawn for ten minutes at a time. Tr. 57-58. Plaintiff
9 testified that she goes to the store once a month when it is not crowded, and
10 occasionally to drop off or pick up her kids from school. Tr. 60, 64. She testified
11 that she reads books, watches television, and gets on the computer to check
12 Facebook and email. Tr. 68.

13 STANDARD OF REVIEW

14 A district court's review of a final decision of the Commissioner of Social
15 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
16 limited: the Commissioner's decision will be disturbed “only if it is not supported
17 by substantial evidence or is based on legal error.” *Hill v. Astrue*, 698 F.3d 1153,
18 1158–59 (9th Cir.2012) (citing 42 U.S.C. § 405(g)). “Substantial evidence” means
19 relevant evidence that “a reasonable mind might accept as adequate to support a
20 conclusion.” *Id.* at 1159 (quotation and citation omitted). Stated differently,

1 substantial evidence equates to “more than a mere scintilla[,] but less than a
2 preponderance.” *Id.* (quotation and citation omitted). In determining whether this
3 standard has been satisfied, a reviewing court must consider the entire record as a
4 whole rather than searching for supporting evidence in isolation. *Id.*

5 In reviewing a denial of benefits, a district court may not substitute its
6 judgment for that of the Commissioner. If the evidence in the record “is susceptible
7 to more than one rational interpretation, [the court] must uphold the ALJ's findings
8 if they are supported by inferences reasonably drawn from the record.” *Molina v.*
9 *Astrue*, 674 F.3d 1104, 1111 (9th Cir.2012). Further, a district court “may not
10 reverse an ALJ's decision on account of an error that is harmless.” *Id.* at 1111. An
11 error is harmless “where it is inconsequential to the [ALJ's] ultimate nondisability
12 determination.” *Id.* at 1115 (quotation and citation omitted). The party appealing
13 the ALJ's decision generally bears the burden of establishing that it was harmed.
14 *Shinseki v. Sanders*, 556 U.S. 396, 409–10 (2009).

15 **FIVE-STEP SEQUENTIAL EVALUATION PROCESS**

16 A claimant must satisfy two conditions to be considered “disabled” within
17 the meaning of the Social Security Act. First, the claimant must be “unable to
18 engage in any substantial gainful activity by reason of any medically determinable
19 physical or mental impairment which can be expected to result in death or which
20 has lasted or can be expected to last for a continuous period of not less than twelve

1 months.” 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant's impairment must be
2 “of such severity that he is not only unable to do his previous work[,] but cannot,
3 considering his age, education, and work experience, engage in any other kind of
4 substantial gainful work which exists in the national economy.” 42 U.S.C. §
5 1382c(a)(3)(B).

6 The Commissioner has established a five-step sequential analysis to
7 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R. §§
8 404.1520(a)(4)(i)-(v); 416.920(a)(4) (i)-(v). At step one, the Commissioner
9 considers the claimant's work activity. 20 C.F.R. §§ 404.1520(a)(4)(i);
10 416.920(a)(4)(i). If the claimant is engaged in “substantial gainful activity,” the
11 Commissioner must find that the claimant is not disabled. 20 C.F.R. § §
12 404.1520(b); 416.920(b).

13 If the claimant is not engaged in substantial gainful activities, the analysis
14 proceeds to step two. At this step, the Commissioner considers the severity of the
15 claimant's impairment. 20 C.F.R. §§ 404.1520(a)(4)(ii); 416.920(a)(4)(ii). If the
16 claimant suffers from “any impairment or combination of impairments which
17 significantly limits [his or her] physical or mental ability to do basic work
18 activities,” the analysis proceeds to step three. 20 C.F.R. §§ 404.1520(c);
19 416.920(c). If the claimant's impairment does not satisfy this severity threshold,
20 however, the Commissioner must find that the claimant is not disabled. *Id.*

1 At step three, the Commissioner compares the claimant's impairment to
2 several impairments recognized by the Commissioner to be so severe as to
3 preclude a person from engaging in substantial gainful activity. 20 C.F.R. §§
4 404.1520(a)(4)(iii); 416.920(a)(4)(iii). If the impairment is as severe or more
5 severe than one of the enumerated impairments, the Commissioner must find the
6 claimant disabled and award benefits. 20 C.F.R. §§ 404.1520(d); 416.920(d).

7 If the severity of the claimant's impairment does meet or exceed the severity
8 of the enumerated impairments, the Commissioner must pause to assess the
9 claimant's "residual functional capacity." Residual functional capacity ("RFC"),
10 defined generally as the claimant's ability to perform physical and mental work
11 activities on a sustained basis despite his or her limitations (20 C.F.R. §§
12 404.1545(a)(1); 416.945(a)(1)), is relevant to both the fourth and fifth steps of the
13 analysis.

14 At step four, the Commissioner considers whether, in view of the claimant's
15 RFC, the claimant is capable of performing work that he or she has performed in
16 the past ("past relevant work"). 20 C.F.R. §§ 404.1520(a)(4)(iv); 416.920(a)(4)(iv).
17 If the claimant is capable of performing past relevant work, the Commissioner
18 must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(f); 416.920(f).
19 If the claimant is incapable of performing such work, the analysis proceeds to step
20 five.

At step five, the Commissioner considers whether, in view of the claimant's RFC, the claimant is capable of performing other work in the national economy. 20 C.F.R. §§ 404.1520(a)(4)(v); 416.920(a)(4)(v). In making this determination, the Commissioner must also consider vocational factors such as the claimant's age, education and work experience. *Id.* If the claimant is capable of adjusting to other work, the Commissioner must find that the claimant is not disabled. 20 C.F.R. §§ 404.1520(g)(1); 416.920(g)(1). If the claimant is not capable of adjusting to other work, the analysis concludes with a finding that the claimant is disabled and is therefore entitled to benefits. *Id.*

The claimant bears the burden of proof at steps one through four above. *Lockwood v. Comm'r of Soc. Sec. Admin.*, 616 F.3d 1068, 1071 (9th Cir.2010). If the analysis proceeds to step five, the burden shifts to the Commissioner to establish that (1) the claimant is capable of performing other work; and (2) such work “exists in significant numbers in the national economy.” 20 C.F.R. §§ 404.1560(c); 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir.2012).

ALJ’S FINDINGS

At step one, the ALJ found Plaintiff has not engaged in substantial gainful activity since December 12, 2011, the amended alleged onset date. Tr. 22. At step two, the ALJ found Plaintiff has the following severe impairments: obesity; hypothyroidism; gastroesophageal reflux disease (“GERD”); affective disorder;

1 anxiety disorder; borderline intellectual functioning; and methamphetamine
2 dependence in full sustained remission. Tr. 23. At step three, the ALJ found that
3 Plaintiff does not have an impairment or combination of impairments that meets or
4 medically equals one of the listed impairments in 20 C.F.R. Part 404, Subpt. P,
5 App'x 1. Tr. 23. The ALJ then found that Plaintiff had the RFC

6 to perform light work as defined in 20 CFR 404.1567(b) and 416.967(b).
7 Specifically, the claimant can lift/carry twenty pounds occasionally and ten
8 pounds frequently; stand/walk for six hours in an eight hour workday; sit for
9 six hours in an eight hour workday; no climbing of ladders, ropes, or
10 scaffolds, or exposure to unprotected heights; she is limited to performance
11 of simple routine tasks, or lower semiskilled (SVP 3) tasks that she has
12 already learned and demonstrated in past relevant work; and she is limited to
13 no more than brief superficial contact with the general public.

14 Tr. 25. At step four, the ALJ found Plaintiff is capable of performing past relevant
15 work as a sales attendant; ride attendant; and cleaner/housekeeper Tr. 34. In the
16 alternative, at step five, the ALJ found that considering the Plaintiff's age,
17 education, work experience, and RFC, there are other jobs that exist in significant
18 numbers in the national economy that Plaintiff also can perform. Tr. 35. The ALJ
19 concluded that Plaintiff has not been under a disability, as defined in the Social
20 Security Act, from December 12, 2011, through the date of this decision. Tr. 35.

ISSUES

18 The question is whether the ALJ's decision is supported by substantial
19 evidence and free of legal error. Specifically, Plaintiff asserts that the ALJ erred by
20 improperly rejecting the opinions of Plaintiff's examining medical providers: Dr.

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1 William H. Jackline and Dr. Jeanette E. Higgins. ECF No. 12 at 7-13. Defendant
2 argues that the ALJ reasonably evaluated the medical evidence. ECF No. 15 at 5-
3 12.

4 DISCUSSION

5 Medical Opinions

6 There are three types of physicians: “(1) those who treat the claimant
7 (treating physicians); (2) those who examine but do not treat the claimant
8 (examining physicians); and (3) those who neither examine nor treat the claimant
9 [but who review the claimant's file] (nonexamining [or reviewing] physicians).”
10 *Holohan v. Massanari*, 246 F.3d 1195, 1201–02 (9th Cir.2001)(citations omitted).

11 Generally, a treating physician's opinion carries more weight than an examining
12 physician's, and an examining physician's opinion carries more weight than a
13 reviewing physician's. *Id.* If a treating or examining physician's opinion is
14 uncontradicted, the ALJ may reject it only by offering “clear and convincing
15 reasons that are supported by substantial evidence.” *Bayliss v. Barnhart*, 427 F.3d
16 1211, 1216 (9th Cir.2005). Conversely, “[i]f a treating or examining doctor's
17 opinion is contradicted by another doctor's opinion, an ALJ may only reject it by
18 providing specific and legitimate reasons that are supported by substantial
19
20

1 evidence.”¹ *Id.* (citing *Lester v. Chater*, 81 F.3d 821, 830–831 (9th Cir.1995)).

2 Plaintiff argues the ALJ improperly rejected the opinions of Plaintiff’s examining
3 providers, Dr. William H. Jackline and Dr. Jeanette E. Higgins. ECF No. 12 at 8-
4 13.

5 **A. Dr. William Jackline**

6 In February 2012, Dr. Jackline completed a psychological evaluation of
7 Plaintiff. Tr. 316-323. Dr. Jackline diagnosed Plaintiff with major depressive
8 disorder, single episode, moderate; panic disorder, with agoraphobia, mild to
9 moderate; generalized anxiety disorder; posttraumatic stress disorder, mild to
10 moderate; cognitive disorder, NOS (provisional); and amphetamine dependence,
11 sustained full remission (by claimant’s report). Tr. 322. Under the heading of
12 “medical source statement,” Dr. Jackline opined that Plaintiff would be moderately
13 impaired in her ability to understand, remember and follow simple instructions;

14
15 ¹ Defendant argues the ALJ is not required to give “clear and convincing” reasons
16 to reject medical evidence, and instead urges the court to apply the extremely
17 deferential “substantial evidence” standard of review. ECF No. 15 at 5-6 n.1. The
18 court finds this argument is inapposite as the correct standard of review for these
19 medical opinions is whether the reasons given by the ALJ were specific and
20 legitimate, and supported by substantial evidence. *See Bayliss*, 427 F.3d at 1216.

1 however, somewhat paradoxically, he found Plaintiff was only mildly, and “at
2 times” moderately, impaired in her ability to understand, remember and follow
3 “increasingly lengthy, fast-paced and complex verbal information and directions.”
4 Tr. 323. Dr. Jackline further opined that “at a work setting and, when required to
5 work closely with others, [Plaintiff] would show a mildly impaired ability to
6 sustain [h]er concentration and persist at a task;” and Plaintiff would “tend to show
7 moderately impaired social interactive skills and [] a mildly to, at times,
8 moderately impaired ability to quickly, independently and appropriately adapt to
9 changes within her environment.” Tr. 323.

10 The ALJ found that “[w]hile it is agreed the claimant has moderate
11 limitations in social and cognitive functioning, they are not to a degree that would
12 prevent simple routine tasks, the performance of past learned work, or to have brief
13 superficial contact with the public.” Tr. 30. Thus, the ALJ gave “little weight to the
14 severity of” Dr. Jackline’s findings for several reasons. Tr. 30. First, as noted by
15 the Defendant, an ALJ may reject a physician’s opinion if it is not supported by his
16 or her own treatment notes. *See Tommasetti v. Astrue*, 533 F.3d 1035, 1041 (9th
17 Cir. 2008). Here, the ALJ noted that Plaintiff’s “ability to perform simple tasks or
18 those with an SVP 3 are shown by [Dr. Jackline’s] exam wherein [Plaintiff]
19 completed simple tasks, followed the conversation and tasks without difficulty, and
20 performed serial threes.” Tr. 30, 319-321. In further support of this reasoning, the

1 ALJ noted Plaintiff “has social skills with strangers as [Dr. Jackline] described her
2 as pleasant, polite and cooperative.” Tr. 30, 319. Moreover, the court’s
3 independent review of Dr. Jackline’s mental status exam reveals that she presented
4 with only a “mildly low energy level and with a mildly dysthymic mood;” and
5 several times during the evaluation she “showed mild, mirthful responses in the
6 form of brief smiles.” Tr. 319. Plaintiff showed no irregularities of gait or posture;
7 showed no psychomotor agitation; responded to all interview questions and
8 attempted all tasks during the mental status examination; was not irritable or
9 belligerent; spoke with normal volume and rate; had adequate remote memory; and
10 was oriented to time, place, and person. Tr. 319-320. Thus, the ALJ’s reasoning
11 that the results of Dr. Jackline’s evaluation did not support the severity of his
12 medical source statement was specific and legitimate, and supported by substantial
13 evidence.

14 Second, the ALJ found that the severity of Dr. Jackline’s findings “appeared
15 largely based on the claimant’s self-report while she is not entirely credible.” Tr.
16 30. “An ALJ may reject a treating physician’s opinion if it is based ‘to a large
17 extent’ on a claimant’s self-reports that have been properly discounted as
18 incredible.” *Tommasetti*, 533 F.3d at 1041. As an initial matter, it is notable that
19 Plaintiff fails to assign error to the ALJ’s adverse credibility finding in this case.
20 *See Carmickle v. Comm’r, Soc. Sec. Admin.*, 533 F.3d 1155, 1161 n.2 (9th Cir.

1 2008) (the court need not address issue not argued with specificity in Plaintiff's
2 brief). While not challenged by Plaintiff, the court notes that the ALJ properly
3 supported the adverse credibility finding with reasons supported by substantial
4 evidence, including: the objective evidence does not support the degree of
5 limitation alleged by Plaintiff; Plaintiff's medical records show a history of
6 treatment and success managing her symptoms with medication; Plaintiff's daily
7 activities were consistent with the ALJ's RFC finding; Plaintiff's testimony was
8 inconsistent with other evidence of record; and the record contained evidence that
9 Plaintiff was manipulating the system for the purposes of monetary gain. Tr. 26-29,
10 276. Instead of taking issue with the ALJ's credibility finding, the Plaintiff only
11 argues that this was not a valid reason to reject Dr. Jackline's decision because the
12 ALJ improperly noted that Dr. Jackline "did not have the benefit of reviewing the
13 entire record of evidence, including the CDIU report." ECF No. 12 at 12 (citing Tr.
14 30). Plaintiff is correct that Dr. Jackline's report indicates that he was, in fact, able
15 to review the limited records available at the time of his examination. Tr. 317.
16 Moreover, it was improper for the ALJ to rely on Dr. Jackline's failure to review
17 the CDIU report, which was not transmitted until May 31, 2012, several months
18 after Plaintiff was evaluated by Dr. Jackline in February 2012. *See* Tr. 273, 316.
19 However, the court finds these errors are harmless because the ALJ articulated

1 additional specific and legitimate reasons for rejecting Dr. Jackline's opinion. *See*
2 *Carmickle*, 533 F.3d at 1162-63.

3 First, the only evidence from the adjudicatory evidence that was available
4 for Dr. Jackline's review was a single doctor visit for "medication management"
5 on December 16, 2011. Tr. 290-296, 317. Moreover, as noted in the previous
6 section, the results of Dr. Jackline's mental status examination were almost entirely
7 within normal limits, including: descriptions of Plaintiff as mirthful, friendly,
8 pleasant, polite, cooperative, and compliant; 100% intelligible verbalizations;
9 oriented as to time, place and person; adequate remote memory; correctly spelling
10 WORLD forward and backward; and following a simple three step command. Tr.
11 319-321. Only one portion of the mental status exam referred to Plaintiff as
12 presenting with "mildly low energy" and a "mildly dysthymic mood." Tr. 319.
13 This objective evidence was in stark contrast to Plaintiff's self-report during the
14 evaluation that she rated herself at an 8 out of 10 on a depression scale, saw
15 shadows out of the corners of her eyes, had anxiety, endorsed having posttraumatic
16 stress disorder, had only one friend, and was not even able to look for work due to
17 being nervous and upset. Tr. 316-322. Thus, it was reasonable for the ALJ to infer
18 that Dr. Jackline's findings were largely based on Plaintiff's non-credible self-
19 report, which accounted for a majority of the information recounted in Dr.
20 Jackline's evaluation. *See Batson v. Comm'r of the Soc. Sec. Admin.*, 359 F.3d

1 1190, 1193 (“the Commissioner’s findings are upheld if supported by inferences
2 reasonably drawn from the record.”). This was a specific and legitimate reason for
3 the ALJ to reject Dr. Jackline’s opinion.

4 Third, and finally,² the ALJ found that Dr. Jackline’s opinion “was not
5 supported by longitudinal clinical findings of mental abnormality” and
6 “inconsistent with the overall evidence that shows [Plaintiff’s] symptoms are
7 medically manageable.” Tr. 30. The consistency of a medical opinion with the
8 record as a whole is a relevant factor in evaluating that medical opinion. *See Orn v.*
9 *Astrue*, 495 F.3d 625, 631(9th Cir. 2007). Plaintiff argues that Dr. Jackline’s
10 findings are consistent with the findings of examining physician Dr. Jeannette
11 Higgins, and records from Frontier Behavioral Health from April 2013 to July
12 2013. ECF No. 12 at 12. However, as noted by the Defendant, Drs. Jackline and
13 Higgins reached opposite conclusions as to whether Plaintiff could follow simple
14 directions. ECF No. 15 at 8-9 (citing Tr. 323, 371). Moreover, as noted by the ALJ,
15 Plaintiff’s records during the adjudicatory period indicate that she did not seek

16 ² The ALJ also notes that “the evidence shows the claimant was motivated to try
17 and establish entitlement to disability benefits.” Tr. 30. However, the court
18 declines to address this issue as it was not raised with specificity in Plaintiff’s
19 briefing. *See Carmickle*, 533 F.3d at 1161 n.2.

1 mental health counseling until April 2013; and after not showing up for multiple
2 appointments she was discharged from care in July 2013. Tr. 30 (citing Tr. 365).
3 During this care at Frontier Behavioral Health, she was able to attend group
4 therapy classes, which the ALJ noted “suggest[s] a greater ability to be around
5 others than alleged” (Tr. 30); and Plaintiff reported that her depression and sleep
6 was better with medication. Tr. 341, 348, 352. The ALJ also noted that Plaintiff
7 sought mental health medication from her primary provider, “without reporting any
8 significant mental health difficulties.” Tr. 30, 377, 398, 402, 432. Finally, the ALJ
9 relied on several of Plaintiff’s statements to Dr. Jackline that appear inconsistent
10 with the overall record at that time, including: (1) Plaintiff’s report to Dr. Jackline
11 that she had no close relationships and only one friend, which conflicts with
12 evidence that Plaintiff reported having a fiancé during this same time period (Tr.
13 279, 321); and (2) Plaintiff’s reports of both auditory and visual hallucinations to
14 Frontier Behavioral Health (Tr. 343); while denying auditory hallucinations, and
15 describing a different type of hallucination, to Dr. Jackline (Tr. 320). Tr. 30. These
16 inconsistencies between the overall record, and the more severe limitations
17 assessed by Dr. Jackline, was a specific and legitimate reason to reject his opinion.

18 **B. Dr. Jeanette Higgins**

19 In December 2013, Plaintiff was referred by the Division of Disability
20 Services for a complex psychological assessment. Tr. 367-376. Dr. Higgins

1 diagnosed Plaintiff with major depressive disorder, recurrent, moderate; anxiety
2 disorder NOS; amphetamine dependence, sustained full remission (by claimant's
3 report); alcohol dependence, sustained full remission (by history); and borderline
4 intellectual functioning. Tr. 371. Dr. Higgins opined that Plaintiff would be able to
5 understand, remember, and carry out simple instructions and to make judgments on
6 simple work related decisions; but would not have the ability to understand,
7 remember and carry out complex instructions or to make judgments on complex
8 work-related decisions based on memory and cognitive impairment. Tr. 371. She
9 further opined that Plaintiff would be able to

10 interact appropriately with the public in low-pressure conditions with
11 immediate access to support given her presentation and employment history.
12 She would do best in interactions with the public that are rather limited in
13 scope and structured or scripted. She likely has the ability to appropriately
14 interact with a supervisor and coworkers who are patient, tolerant, and
supportive. She does not have the ability to respond appropriately to typical
work situations or to changes in a routine work setting given memory and
cognitive impairments, decompensation under perceived pressure, and lack
of self-confidence in her abilities.

15 Tr. 371. As noted by the ALJ, Dr. Higgins also completed a medical source
16 statement reflecting the above statements in the form of mild to marked limitations
17 in a variety of cognitive and social functioning. Tr. 31, 373-74. In particular, Dr.
18 Higgins opined marked limitations in Plaintiff's ability to understand, remember,
19 and carry out simple instructions and make judgments on complex work-related
20

1 decisions; and her ability to respond appropriately to usual work situations and to
2 changes in a routine work setting. Tr. 373-74.

3 The ALJ gave partial weight to Dr. Higgins' opinion. Tr. 31. He gave "great
4 weight" to the portion of her opinion that Plaintiff is able to perform simple tasks
5 and interact with the public on a restricted basis; because it was consistent with her
6 performance and ability to persist through the examination, as well as her daily
7 activities of reading, using the computer, and attending church. Tr. 31. The ALJ
8 also found this portion of the opinion was consistent with Plaintiff's report to Dr.
9 Higgins that she had a "history of satisfactory relationships with coworkers and
10 supervisors." Tr. 31, 369. However, the ALJ gave "no weight" to the portion of Dr.
11 Higgins' opinion that Plaintiff does not have the ability to respond appropriately to
12 typical work situations or to changes in a routine work setting given memory and
13 cognitive impairments, decompensation under perceived pressure, and lack of self-
14 confidence in her abilities. Tr. 32, 371. Plaintiff argues that the ALJ failed to
15 properly consider Dr. Higgins' opinion. ECF No. 12 at 12-13. The court disagrees.
16 As noted by Defendant, the ALJ provided multiple valid reasons for rejecting Dr.
17 Higgins' opinion.

18 As in the previous section, Plaintiff's only specific challenge to the ALJ's
19 findings regarding this portion of Dr. Higgins' opinion is to briefly contend that the
20 ALJ improperly found that Dr. Higgins "did not have the opportunity to review all

1 of the evidence of record, including the CDIU report that shows the claimant was
2 likely motivated by secondary gain.” ECF No. 12 at 12-13 (citing Tr. 32). Again,
3 Plaintiff is correct that Dr. Higgins’ report indicates that she did, in fact, review all
4 of Plaintiff’s records; including: the CDIU report,³ medical records, SSA reports,
5 and the results of her own independent testing. *Id.* (citing Tr. 367-370). Thus, it
6 was error for the ALJ to misstate that Dr. Higgins was unable to review “all of the
7 evidence of record.” Tr. 32. Further, the court finds the ALJ erred by relying on
8 reasoning that “[s]ome of [Dr. Higgins’ opinion] was based on the claimant’s self-
9 report, while the claimant is not entirely credible.” Tr. 32. It is widely accepted that
10 an ALJ may reject a physician’s opinion if it is based “to a large extent” on
11 claimant’s self-reports that have been properly found not credibly.” *Tommasetti*,
12 533 F.3d at 1041. However, when explaining a reason for rejecting medical
13 opinion evidence, the ALJ must do more than state a conclusion, rather, the ALJ
14 “must set forth his [or her] own interpretations and explain why they, rather than
15 the doctors’, are correct.” *Reddick v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998).

16 ³ Plaintiff refers, without making any specific argument, to the ALJ’s assignment
17 of “little weight” to the CDIU report. ECF No. 12 at 12. The court declines to
18 address this issue as it was not raised with specificity in Plaintiff’s briefing. *See*
19 *Carmickle*, 533 F.3d at 1161 n.2.

1 Here, despite Plaintiff's failure to challenge the ALJ's adverse credibility finding,
2 the court finds that the ALJ does not articulate sufficient reasoning as to how this
3 particular portion of Dr. Higgins' opinion regarding Plaintiff's ability to respond to
4 typical work situations and changes in a routine work setting was based "to a large
5 extent" on claimant's self-reports, particularly in light of the record review and
6 objective testing performed by Dr. Higgins. ECF No. 12 at 12-13. This was error.

7 However, the court finds these errors are harmless because the ALJ
8 articulated additional specific and legitimate reasons for rejecting Dr. Higgins'
9 opinion. *See Carmickle*, 533 F.3d at 1162-63. First, an ALJ may discount a
10 medical source opinion to the extent it conflicts with the claimant's daily activities.
11 *Morgan v. Comm'r Soc. Sec. Admin.*, 169 F.3d 595, 601-602 (9th Cir. 1999).
12 Plaintiff does not address the ALJ's characterization of Plaintiff's daily activities
13 as inconsistent Dr. Higgins' findings. *See Carmickle*, 533 F.3d at 1161 n.2 (court
14 need not address issue not argued with specificity in Plaintiff's brief). As noted by
15 the ALJ, Plaintiff reports caring for her three children, including a young child
16 with autism. Tr. 32, 368. In addition, as noted by Dr. Higgins, Plaintiff denied any
17 difficulty with activities of daily living including cooking, cleaning, laundry, and
18 grocery shopping. Tr. 368. The ALJ further notes that Plaintiff failed to disclose to
19 Dr. Higgins that earlier that same year she reported being "excited" to start school
20 with the goal of starting a catering business. Tr. 32, 333, 337, 345, 352. Similarly,

1 Plaintiff also failed to report to Dr. Higgins that she had been looking for work
2 earlier in the year, and had a boyfriend who she was planning to marry after
3 finishing school. Tr. 327, 337, 358. These conflicts between Plaintiff's reported
4 activities and this portion of Dr. Higgins' opinion was a legitimate and specific
5 reason, unchallenged by Plaintiff, to reject this portion of Dr. Higgins' opinion.

6 Second,⁴ and most significantly, the ALJ noted inconsistencies between Dr.
7 Higgins' opinion and the record evidence as a whole; as well as finding that the
8 objective medical evidence is consistent with the assessed RFC. Tr. 32. An ALJ
9 may discredit medical source opinions that are unsupported by the record as a
10 whole or by objective medical findings. *Batson*, 359 F.3d at 1195. As noted by the
11 ALJ, Dr. Higgins found that "while Plaintiff's scores were low on cognitive
12 testing, the claimant's adaptive functioning since her developmental period has not
13 been consistent with intellectual disability (formerly referred to as mild mental
14 retardation)." Tr. 31-32 (also noting that Plaintiff has a history of working at

15 ⁴ The ALJ also notes that Dr. Higgins "did not consider that he claimant may have
16 intentionally performed worse on this exam with her, than with Dr. Jackline, given
17 her inability to spell a word backwards and decreased memory ability." 32. Tr.
18 However, the court declines to address this issue as it was not raised with
19 specificity in Plaintiff's briefing. *See Carmickle*, 533 F.3d at 1161 n.2.

1 substantial gainful activity levels), Tr. 371. Thus, Dr. Higgins’ interpretation of her
2 own objective testing appears to be inconsistent with her opinion that Plaintiff
3 would be unable to adapt to changes in a routine work setting. Tr. 371. Further, as
4 noted by the ALJ, Plaintiff is consistently described, throughout the record, as
5 cooperative and her thought processes are intact. Tr. 32, 319-321, 346-347, 369.
6 Dr. Higgins’ own mental status exam revealed that Plaintiff followed the
7 conversation without difficulty, her thought process was “coherent and goal
8 directed,” and she sat through the three and half hour examination with “effortful”
9 concentration and persistence. Tr. 369. In addition, as noted by the ALJ, the
10 medical records “do not support the degree of panic and anxiety attacks alleged by
11 the Plaintiff.” Tr. 32. As discussed in the previous section, Plaintiff’s records show
12 that she only sought mental health counseling in April 2013 and was discharged for
13 not showing up to appointments several months later, in July 2013. Tr. 365.
14 Moreover, throughout the adjudicatory period, Plaintiff sought mental health
15 medication from her primary provider, “without reporting any significant mental
16 health difficulties.” Tr. 30, 377, 398, 402, 432. Finally, as noted by the ALJ, “by
17 the claimant’s own self-reports, her medication helps to manage and alleviate her
18 mental health symptoms.” Tr. 32, 61-63, 341, 348, 352.

19 While not argued with specificity in Plaintiff’s briefing, the court
20 acknowledges that the record includes objective evidence that could be interpreted

1 more favorably to Plaintiff; including Dr. Higgins' findings that Plaintiff had low-
2 to-borderline range memory abilities and extremely low-to-borderline cognitive
3 abilities, borderline intellectual functioning, sporadic eye contact, and constricted
4 affect. Tr. 369-371. However, "where evidence is susceptible to more than one
5 rational interpretation, it is the [Commissioner's] conclusion that must be upheld."
6 *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005). Thus, the inconsistencies
7 between the overall record and the portion of Dr. Higgins' opinion assessing more
8 severe limitations, was a specific and legitimate reason to reject her medical
9 opinion. Finally, even assuming, *arguendo*, that the ALJ did err in rejecting this
10 portion of Dr. Higgins' opinion, any error is harmless because the ALJ's assessed
11 RFC arguably captured this portion of the limitations opined by Dr. Higgins by
12 limiting Plaintiff to "tasks that she has already learned and demonstrated in past
13 relevant work." Tr. 25; *See Molina*, 674 F.3d at 1115 (an error is harmless if it is
14 does not impact the ALJ's ultimate non-disability findings).

15 CONCLUSION

16 After review the court finds the ALJ's decision is supported by substantial
17 evidence and free of harmful legal error.

18 ACCORDINGLY, IT IS HEREBY ORDERED:

- 19 1. Plaintiff's Motion for Summary Judgment, ECF No. 12, is **DENIED**.

GRANTED.

DATED this 2nd day of December, 2015.

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT AND DENYING PLAINTIFF'S MOTION FOR SUMMARY
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